

The Honorable Michael H. Simon

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

JOHN DOE #1; JUAN RAMON
MORALES; JANE DOE #2; JANE DOE
#3; IRIS ANGELINA CASTRO; BLAKE
DOE; BRENDA VILLARRUEL; and
LATINO NETWORK,

Plaintiffs,

v.

DONALD TRUMP, in his official
capacity as President of the United States;
U.S. DEPARTMENT OF HOMELAND
SECURITY; KEVIN MCALEENAN, in
his official capacity as Acting Secretary
of the Department of Homeland Security;
U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES; ALEX M.
AZAR II, in his official capacity as
Secretary of the Department of Health
and Human Services; U.S.
DEPARTMENT OF STATE; MICHAEL
POMPEO, in his official capacity as
Secretary of State; and UNITED
STATES OF AMERICA,

Defendants.

NO. 3:19-cv-01743-SB

DECLARATION OF PAM
MACEWAN
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION

1 I, Pam MacEwan, declare as follows:

2 1. I am over the age of 18, competent to testify as to the matters herein and make
3 this declaration based on my personal knowledge.

4 2. I am the Chief Executive Officer (CEO) of the Washington Health Benefit
5 Exchange (“WAHBE” or “the Exchange”). I have held this position since 2015. Before leading the
6 organization as the CEO, I served as Chief of Staff from 2012 to 2015. In that role I served as the
7 principal strategic advisor to the CEO and assumed day-to-day responsibility for operations of the
8 Exchange. I have 25 years of experience in healthcare management.

9 3. I am submitting this declaration in support of the Plaintiffs’ Motion for Preliminary
10 Injunction filed in response to the newly issued “Presidential Proclamation on the Suspension of
11 Entry of Immigrants Who Will Financially Burden the United States Healthcare System” (“PP
12 9945” or “the Proclamation”) and “Notice of Information Collection Under OMB Emergency
13 Review: Immigrant Health Insurance Coverage” (“Emergency Notice”).

14 4. As I understand the Proclamation and the Emergency Notice, those seeking visas
15 who are not exempted can have their application denied unless they demonstrate that they “will be
16 covered by approved health insurance” within 30 days of entry into the United States by providing
17 specific plan details, or “possess the financial resources to pay for reasonably foreseeable medical
18 costs.” This creates a catch-22 under existing federal law: visa seekers cannot access individual
19 market coverage through Marketplaces (like WAHBE) without verifying residency and lawful
20 presence through a strict eligibility process, however, those seeking to establish residency and
21 lawful presence through proper immigration channels cannot do so without verifying insurance
22 status. As a result, individuals who otherwise could become lawfully-present immigrants and
23 qualify for health insurance through WAHBE will be barred from both aims.

24 5. WAHBE is Washington State’s health insurance exchange, or insurance
25 marketplace. WAHBE was established in 2011 under the Patient Protection and Affordable Care
26 Act (ACA) and state legislation, Wash. Rev. Code § 43.71. WAHBE is a self-sustaining,

1 public-private partnership governed by an 11-member bipartisan board. WAHBE operates
 2 Washington Healthplanfinder (www.wahealthplanfinder.org), the online portal used by one in
 3 four Washington residents to obtain Washington Apple Health (Medicaid) and commercial
 4 medical and dental insurance. About 1.5 million Washington residents use Washington
 5 Healthplanfinder to obtain Medicaid. Another 200,000 residents use Washington
 6 Healthplanfinder to obtain commercial medical and dental insurance in the individual market,
 7 which represents about 80% of the total individual market in Washington. About 65% of
 8 commercial Exchange enrollees receive premium tax credits.

9 6. Over 24,000 lawfully-present residents receive commercial coverage through
 10 Washington Healthplanfinder, and 84% of those lawfully-present residents receive premium tax
 11 credits. Lawfully-present enrollees represent 13% of the total residents receiving commercial
 12 coverage through Washington Healthplanfinder.

13 7. Since implementation of the ACA and formation of the Exchange, the uninsured
 14 rate in Washington State has declined from 13.9% in 2012, to 5.5% in 2017.

15 8. PP 9945 will introduce significant risks to the hard-won progress our state has made
 16 to reduce the uninsured rate and ensure all lawfully-present residents have access to affordable
 17 health care. It will harm visa-seeking immigrants and their families by precluding them from
 18 getting affordable, comprehensive coverage through WAHBE and instead steering them toward
 19 coverage that is not ACA-compliant. The Proclamation is therefore likely to harm the Exchange
 20 by reducing enrollment and undermining the stability of the commercial health insurance market.
 21 The Proclamation is also likely to harm the state by increasing uncompensated care -- for which
 22 the state will likely bear the cost -- and adversely impact the broader state economy.

23 9. The Proclamation contemplates that only certain types of commercial coverage,
 24 such as employer-sponsored plans, unsubsidized¹ Exchange marketplace plans, short-term limited
 25

26 ¹ “Unsubsidized” is not defined in the Proclamation.

1 duration insurance (STDLI) plans effective for at least 364 days, and catastrophic plans, among
 2 others, are qualifying types of coverage. Procuring unsubsidized marketplace plans presents
 3 practical challenges, if not the impossibility, of establishing proof of such coverage while abroad.
 4 Under federal law and regulations associated with the Affordable Care Act, an individual applying
 5 for commercial unsubsidized coverage through a Marketplace must establish residency in that state
 6 as well as lawful presence. 42 U.S.C. § 18032(f), 45 C.F.R. § 155.305(a)(3). This contradicts the
 7 Proclamation's supposition that the individual could have already obtained such coverage or would
 8 be able to prove that it is forthcoming in order to obtain a visa to enter the country.

9 10. Because visa-seeking immigrants residing abroad cannot obtain health insurance
 10 through the Exchange, PP 9945 undermines the health of Washington's individual insurance
 11 market, potentially impacting the affordability of coverage for lawfully-present residents and
 12 citizens alike.

13 11. Lawfully-present enrollees are more likely to represent 'favorable' insurance risk,
 14 because they are often younger, healthier, or lower-than-average utilizers of health care services
 15 when compared to the general insured population. Several studies have concluded that immigrants
 16 are net contributors to both private coverage and Medicare, paying more in insurance premiums
 17 than they receive in benefits.² Reduced enrollment among lawfully-present enrollees will result
 18 in a sicker risk pool and could increase premium costs for all remaining residents enrolled in
 19 commercial insurance coverage through Washington Healthplanfinder. Increased premiums lead
 20 to higher rates of uninsurance, which in turn leads to increases in uncompensated care throughout
 21 the state.

22 12. It is also troubling that the Proclamation seeks to permit STDLI coverage, which
 23 does not comply with ACA consumer protections or those codified in Washington state law, to
 24

25 ² Zallman, L., Woolhandler, S., Touw, S., Himmelstein, D.U., and Finnegan K.E.
 26 (2018). Immigrants pay more in private insurance premiums than they receive in benefits.
 Health Affairs 2018 37:10, 1663-1668.

1 qualify as “acceptable” coverage. State law limits the maximum duration of STLDI plans offered
 2 in Washington to three months (Wash. Admin. Code 284-43-8000). This creates a further catch-
 3 22 for visa applicants, as the Proclamation recognizes only STLDI plans that are “effective for
 4 a minimum of 364 days,” but those plans do not, by law, exist in Washington State.

5 13. STLDI plans have been widely demonstrated to lack critical comprehensive
 6 coverage³ and can be prohibitively expensive for individuals with pre-existing conditions.

7 14. PP 9945 will divert lawfully-present immigrants from meaningful,
 8 comprehensive coverage offered through the Exchange, toward companies that engage in
 9 medical under-writing, spend the majority of premium revenue on non-medical expenses, and
 10 are known to exclude core benefits like maternity, mental health and substance abuse disorder
 11 treatments, which threatens both the health and financial well-being of this population.

12 15. Diverting consumers to STLDI plans could lead directly to increased
 13 uncompensated care costs for the state when the medical care these customers need is not
 14 covered or exceeds their coverage limits, not to mention when these customers lose their
 15 coverage after only three months (importantly, loss of STLDI coverage is not a qualifying event,
 16 so it does not trigger a special enrollment period, which is the mechanism that allows customers
 17 to get Exchange commercial coverage mid-year). Without health insurance, residents are less
 18 likely to receive the health care services they need to stay healthy. Uninsured individuals have
 19 more absences from work and school, and they are more likely to delay preventive or chronic
 20 condition care more often, resulting in poorer health outcomes. Foregoing preventative care also
 21 results in more emergency room visits and other forms of uncompensated care.

22 16. General fear and confusion about these new public charge related rules, including

23 ³ A Kaiser Family Foundation analysis of STLDI sold in 2018 shows that 43% did not
 24 cover mental health services, 62% did not cover services for substance abuse treatment, and
 25 71% did not cover outpatient prescription drugs. No plans covered maternity care. These
 26 policies had out-of-pocket maximums as high as \$30,000 and lifetime limits on care ranging
 from \$250,000 to \$2 million. *See: Karen Pollitz et al., Understanding Short-Term Limited
 Duration Insurance, Kaiser Family Foundation (Apr. 2018).*

1 the Proclamation, could also cause lawfully-present residents, including those sponsoring
 2 impacted visa applicants, to drop their current health coverage or choose not to apply for
 3 coverage for themselves and their family members through the Exchange. WAHBE contracts
 4 with community-based assisters who provide in-person enrollment assistance to health insurance
 5 applicants. These assisters report that lawfully-present individuals and families with lawfully-
 6 present members are hesitant to apply for coverage or keep their current coverage. One assister
 7 organization reported that over 400 of the lawfully-present residents they work with have
 8 dropped benefits in 2019 due to public charge fears. From February 2019 to September 2019,
 9 Exchange data shows that over 2,000 lawfully-present enrollees have disenrolled from Exchange
 10 coverage.

11 17. The potential loss of Exchange enrollment due to the Proclamation and
 12 Emergency Notice also threatens the Exchange's own sustainability. Any loss of enrollees will
 13 lower WAHBE's revenues because WAHBE's operations are mostly financed through fees paid
 14 by carriers. Federal and state laws authorize user fees on carriers that offer plans on the
 15 Exchange. 45 C.F.R. §§ 155.160, 156.50; Wash. Rev. Code §§ 43.71.080, 48.14.020(2)(b),
 16 48.14.0201(5)(b). Carriers are taxed two percent on the value of premiums paid and are charged
 17 a flat per-member per-month assessment for enrollees on the Exchange. These premium taxes
 18 and assessments are deposited in the state treasurer's health benefit exchange account. Wash.
 19 Rev. Code § 43.71.060(2).

20 18. For state fiscal year 2019 (July 2018 to June 2019), the Exchange revenues related
 21 to QHP premiums and assessments were \$36.1 million, and projected revenues for state fiscal
 22 year 2020 (July 2019 to June 2020) are \$31.2 million. Lawfully-present residents represent 13%
 23 of the total residents receiving commercial coverage through Washington Healthplanfinder. A
 24 13% reduction in QHP enrollment could decrease state fiscal year 2020 revenues by
 25 approximately \$4.1 million using 2019 premium tax rates. The exact amount of enrollment loss
 26 cannot be precisely calculated, but any decline in enrollment will reduce the Exchange revenue.

Further, if premium tax funds are not available as a state Medicaid match, additional state general fund dollars would be needed to replace those premium tax funds to support the Exchange's costs for enrolling Medicaid applicants through the shared on-line portal.

19. In conclusion, the Proclamation and Emergency Notice will likely place many visa applicants in an untenable position in which they may be unable to access *any* coverage sufficient to satisfy the Proclamation's requirements, while any authorized coverage they are able to access will likely be deficient, leading to increases in uncompensated care. The Proclamation will also harm access to healthcare for the lawfully-present population, the stability of the Washington health insurance market, and the Exchange's financial sustainability.

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Executed on November 7, 2019, in Olympia, Washington.



PAM MACEWAN

Chief Executive Officer

Washington Health Benefit Exchange